



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Caroline J. Charles (Brendale)

3 IBIA 91 (09/12/ 1974)

Also published at 81 Interior Decisions 505

Related Board cases:

3 IBIA 56

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5 IBIA 96

Dismissed, *Confederated Tribes & Bands of the Yakima Indian Nation v. Kleppe*,  
No. C-76-199 (E.D. Wash. May 27, 1977)

Earlier judicial case:

Stipulated remand, *Philip Brendale, as Executor of the Estate of Caroline B. Charles, Deceased v. United States*, Civil Action No. C-74-21 (E.D. Wash. June 28, 1974)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ESTATE OF CAROLINE J. CHARLES (BRENDAL)

(Yakima Allottee No. 4240, Deceased)

IBIA 75-14

Decided September 12, 1974

This is an Order of Remand to an Administrative Law Judge to correct error by the conduct of new and further proceedings.

Remanded.

1. Indian Probate: Secretary's Authority: Generally

Where it becomes necessary, the Secretary in the exercise of his supervisory authority reserved in 43 CFR 4.5, may assume original jurisdiction of a pending Indian probate, and if no regulations relative to procedures are effective at the time, he may remand the case to an administrative law judge with directions governing further or additional proceedings.

APPEARANCES: Arthur W. Kirschenmann, of the law firm of Kirschenmann, Devine and Fortier for Philip Brendale.

OPINION BY CHIEF ADMINISTRATIVE JUDGE MCKEE

This matter comes on for consideration as a proceeding collateral to and conducted in conjunction with consideration of the complaint filed in the United States District Court for the Eastern District of Washington, in the action entitled Philip Brendale as Executor of the Estate of Caroline B. Charles, Deceased v. United States of America, et al., Civil Action No. C-74-21 filed February 1, 1974.

A stipulation entered into by the parties in this case is as follows:

IT IS HEREBY STIPULATED AND AGREED by and among the respective parties hereto through their respective counsel that at the request of the Interior Department the claim of the plaintiff be resubmitted to the Office of Hearings and Appeals in order that the same may be reconsidered by the Secretary of Interior.

IT IS FURTHER STIPULATED AND AGREED, as aforesaid, that the above-entitled action be held in abeyance pending final administrative action in accordance herewith.

DATED at YAKIMA, WASHINGTON this 28th day of June, 1974.

The proceedings herein are in furtherance of the purpose of the stipulation.

An examination of the probate records in the Estate of Cecelia Smith (Borger), Deceased, Yakima Allottee No. 4161, Probate No. E-182-59, the Estate of Morris A. Charles, Deceased, Yakima Allottee No. 4247, Probate No. IP PO 38K 71, and the record in the probate of the estate of this decedent, Caroline B. Charles also known as Caroline J. Charles (Brendale), Probate No. IP PO 48K 74, reveals the following.

Cecelia Smith and Morris Charles were the children of Mary Charles, deceased Yakima Allottee No. 4244, each of whom inherited a one-fourth interest in her allotment described as the SW 1/4 of sec. 8, T. 7 N., R. 13 E., Willamette Meridian, Yakima County, Washington, containing 160 acres. Cecelia died in 1958 and by will left her one-fourth interest, one-half each to the daughters of her brother, Morris A. (K.) Charles, i.e., Caroline B. Charles and Mary (Andle) Andal. Upon the approval of the will on May 15, 1959, it was determined that under the Act of August 9, 1946 (60 Stat. 968, As Amended, 25 U.S.C. § 607) Caroline B. Charles was eligible to receive her interest under the Act as an enrolled member of the Yakima tribe and as one having a one-fourth blood quantum of the Tribe, whereas Mary Andal did not have

sufficient blood quantum. The interest devised to Mary was therefore distributed as intestate property to her father, Morris Charles, vesting in him an additional  $\frac{1}{8}$  interest in the allotment of Mary Charles making a total of  $\frac{3}{8}$ .

Morris A. (K) Charles died November 23, 1964, leaving a will by which he devised all of his property to his daughter, Caroline. However, the probate of his estate could not be closed for the reason that the original showing of the blood quantum of Caroline as a one-fourth had been challenged, and she had been held to be only a one-eighth Yakima. This ruling was appealed successively to the Commissioner of Indian Affairs and then to the Secretary, and was not ultimately decided until April 11, 1969, when her classification as a person of one-eighth blood quantum was affirmed. Attached hereto as "Appendix A" is the certificate of blood and enrollment originally relied upon by the Examiner in the Estate of Cecelia; also attachment as "Appendix B," is the decision of the Secretary issued April 11, 1969; and "Appendix C" bearing the notation by the Examiner that he was not advised of the Secretary's decision of April 11, 1969, until March 24, 1972.

The final decision in the probate of the Estate of Morris Charles was thus delayed until March 31, 1972, when the will was approved under the Act of December 31, 1970 (84 Stat. 1874,

U.S.C. § 607), an amendment of the Act of August 9, 1946, supra. By this amendment, the normal heirs or devisees who are not members of the Yakima Tribe and not of one-fourth of the blood of the Tribe could take and hold the property passing to them upon death, subject only to the option of the Tribe to purchase the same at its fair market value as determined by the Secretary after appraisal. By its terms the amendment was made effective as to all estates pending before the Examiner at the date of the Act.

Immediately following the approval of the will of Morris Charles, the Yakima tribe indicated its election to take the 3/8 interest in the Mary Charles allotment shown in the inventory of his estate.

An appraisal of the property was informally furnished by the Bureau of Indian Affairs, and without any other action the Bureau transferred the requisite funds from the Tribe's account to the account of the Estate of Morris Charles. On May 12, 1972, the Examiner issued a Supplemental Order of Distribution in which he recited the filing of the election by the Tribe to take, and the transfer of funds on the valuation shown by the appraisal. Without making any finding as to the fair market value the Examiner decreed the 3/8 interest in the allotment of Mary Charles to the Tribe. Therefore the 3/8 interest, which would have passed to this decedent under the will of her father, is not shown on the inventory in this probate.

However, there is an additional 1/8 interest in the same allotment of Mary Charles to be included in the inventory of this estate. On the present record, this 1/8 interest was acquired through the will of Cecelia Smith (Borger), supra. The tribe has indicated its election in this estate to take the 1/8 interest, but there has been no transfer of funds and there is no order in the record transferring the title to the tribe.

[1] The title to this 1/8 interest in the allotment of Mary Charles is subject to the corrective action which is initiated simultaneously with the issuance of this order, in the Estate of Cecelia Smith (Borger). The corrective action to be taken nunc pro tunc will have the effect, if the new proceeding confirms the record before the Board, of passing the 1/8 interest through the will of Morris A. Charles to this decedent, and through her will to her sole devisee. By the present record the 1/8 interest incorrectly passed to this decedent directly from the said Cecelia. The title of such 1/8 interest would be held, under the order approving the will of this decedent issued February 12, 1974, by Philip Brendale enrolled as a Cowlitz Indian as the successor in interest. As a result of his non-enrollment in the Yakima Tribe, he holds his title subject to the right of the Yakima Tribe to take it from him upon payment of the fair market value as determined by the Judge.

In the conditional order entered this date by the Board in the Estate of Morris A. (K) Charles, Deceased, supra, it is provided that the 1/8 interest in the allotment of Mary Charles added to the inventory shall be made available in that probate proceeding for purchase by the Tribe. The finding is made that if the Tribe fails to elect to take and pay for the additional 1/8 interest in proceedings in the Estate of Morris A. (K) Charles, then the title shall be distributed by the Judge to the United States in trust for Philip Brendale under the will of this decedent.

A further finding is made that the Judge should modify the order approving the will in this estate entered February 12, 1974, to eliminate therefrom the provision that the Yakima Tribe will have two years from the date of such order in which to exercise its statutory option as to the 1/8 interest.

A further finding is made that a similar modification of the said order should be entered by the Judge to eliminate the two years' provision for the Tribes of Warm Springs Reservation to take this decedent's interests in land on that reservation.

The modification of the order insofar as it applies to the Warm Springs interests stems from the provisions of the Act of August 10, 1972 (86 Stat. 530), which is almost identical to the



provisions of the Act of December 31, 1970, applying to the Yakima Tribes. The Act of August 10, 1972, provides that interests in lands on the Warm Springs Reservation pass upon death by inheritance or devise to a non-member of the Tribe (no requirement is made concerning blood quantum of the Warm Springs Tribes), but that they are subject to an option of the Tribe to purchase such interests so inherited at the fair market value as determined by the Secretary after appraisal.

As above indicated, the sole devisee in the decedent's will, Philip Brendale, is shown to be an enrolled member of the Cowlitz Tribe of Indians, presumably not enrolled in the Warm Springs Tribes of Oregon. Under the statute, he is ineligible to hold his title to the Warm Springs interest if the Tribe shall elect to take and pay for said interest. A finding is made that Judge Montgomery shall issue a notice to the Warm Springs Tribes specifying the interests which appear of record to be subject to the Tribal option. He shall allow 45 days, or any extension thereof granted upon a petition timely filed, for the Tribe to file its election to take. He shall simultaneously issue an order to the Superintendent of the Warm Springs Agency to procure at an early date an appraisal of the interests which are available to the Tribe with a report to be

filed at the Agency. A summary of the report shall be furnished for distribution to all parties of interest.

A copy of the order shall be mailed to the attorney for Philip Brendale who may procure an independent appraisal report if he so desires, and a summary of any such report obtained by him shall be filed with the Judge and distributed to all parties in interest.

On August 30, 1974, new regulations were published in 39 F.R. 31635 in final form effective September 30, 1974, as to all pending matters arising under the Act of August 10, 1972 (86 Stat. 530). These appear as a new addition to the 43 CFR Subpart D beginning with § 4.300. After the effective date of these regulations if the Tribe shall elect to take the interest on the Warm Springs Reservation available to it, then further proceedings in relation to the determination of the fair market value and the payment thereof shall be governed by the said regulations.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, it is ORDERED:

1. That further proceedings shall be conducted by Judge R. J.

Montgomery in the probate of this estate in accordance with the findings herein set forth; and

2. That such further proceedings shall be conducted by the Judge as are necessary to the ultimate distribution of the assets of the estate and the final closing of the probate thereof.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed

David J. McKee  
Chief Administrative Judge

I concur:

//original signed

Alexander H. Wilson  
Administrative Judge

Attachments

Appendix A  
Appendix B  
Appendix C

United States  
Department of The Interior  
Office of The Regional Solicitor  
Portland, Oregon  
PO Box 3537  
Portland 8, Oregon

IBIA 75-14

Superintendent,  
Yakima Indian Agency  
Toppenish, Washington.

RE: Cecelia Smith Vergote  
Yakima No. 4161

Dear Sir:

Please examine the roll of tribal membership prepared under the Act of August 9, 1946 (60 Stat. 969), and advise whether the following named individuals, who appear to be probable heirs in this estate, are enrolled members of the Yakima tribes, of 1/4 or more degree of Indian blood of such tribes, as required by section 7 of that Act:

Mary Andle	Niece
Caroline Charles	Niece
Morris Charles	Brother
Frank (Phillip) Charles (born 1893)	Nephew
Rosa Marie Cushner Simmons (Rose C. Mitchell)	Niece (adopted)

Sincerely,

//original signed  
R. J. Montgomery,  
Examiner of Inheritance.

RJM:nb

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I certify that the above named persons are not eligible as required by the said Act to inherit in the above estate. EXCEPT Morris Charles (1/4 Yakima) and Caroline Charles (1/4 Yakima), whom are eligible as required by the said act to inherit in the above estate.

Date: --- February 6, 1959 -----

Superintendent,  
Yakima Indian Agency,  
Toppenish, Washington.

United States Department of the Interior  
Office of The Secretary  
Washington, D.c. 20240

IBIA 75-14  
Tribal Operations  
INDIAN

April 11, 1969

Dear Mr. Kirschenmann:

You have appealed from the Acting Assistant Commissioner of Indian Affairs' decision of August 6, 1968, which upheld the Acting Deputy Assistant Commissioner's affirmance of the action taken by the Yakima Tribal Council to lower the Yakima blood degree of Caroline B. Charles from 1/4 to 1/2 degree. You base your appeal upon your belief that the tribal council's action in correcting the degree of Yakima blood ascribed to your client was of a judicial nature rather than the mere rectification of a clerical error in the membership records.

As part of its internal sovereignty and in the absence of express statutory provisions or Federal regulations to the contrary, the Yakima Tribal Council has full power to correct clerical errors affecting the descent and distribution of the property of its members. More than that, the Yakima Tribal Council would be remiss in its responsibility to all of the tribal members were errors affecting the descent and distribution of property of the members not corrected. Nothing in the Act of August 9, 1946 (60 Stat. 969), which authorizes and directs the preparation of the Yakima membership roll, prohibits the tribal council from making corrections of clerical errors and the policy of the Bureau of Indian Affairs, as indicated in the Acting Assistant Commissioner's letter of August 6, would not operate to prohibit such corrections of clerical errors.

We concur in the Acting Assistant Commissioner's finding that the tribal council's procedure in changing Miss Charles' degree of Yakima blood was inadequate inasmuch as no follow-up attempt was made to locate her to advise her of the change. However, the responsibility for keeping tribal governing bodies advised of current addresses necessarily lies with the tribal members themselves and the Yakima Tribal Council cannot be held solely responsible for not knowing the whereabouts of your client. Your client apparently neglected to inform the postal authorities of her change of address and as a result, the letter addressed to her by the tribal council could not be forwarded to her. In any event, this lack of proper notification was remedied when Miss Charles was offered an opportunity to present evidence bearing on her blood degree to the Commissioner.

Your client was enrolled under the provisions of Section 1(a) of the Act of August 9, 1946, which pertains to the enrollment of Yakima allottees. That action does not require the minimum possession of any degree of Yakima blood as a prerequisite for enrollment.

Your contention that the Commissioner of Indian Affairs had confirmed Miss Charles' degree of Yakima blood by approving the supplemental roll which contained her name cannot be upheld. The Commissioner approved her enrollment because she was an original allottee and, therefore, met the provisions of Section 1(a).

The record indicates that in her application for enrollment with the Yakima Tribes dated July 27, 1935, your client claimed only 1/8 degree Yakima blood. The Yakima Tribal Enrollment Committee erred when it enrolled her as 1/4 degree Yakima and 1/4 degree Nisqually. When your client was notified by the Chairman of that committee on February 28, 1956, that her application had been accepted and that she was found to possess 1/4 degree Yakima and 1/4 degree Nisqually blood, she should have advised the enrollment committee of its error. The letter dated February 28, 1956, specifically allowed 30 days for correction to be made on the findings of the enrollment committee. Miss Charles did not advise the enrollment committee of its error and allowed that error to go uncorrected for years, accepting those benefits that should rightly have accrued only to those members of the Yakima Tribes who possessed at least 1/4 degree Yakima blood.

Based on the foregoing, we conclude that the determination of the Acting Assistant Commissioner should be sustained. Your appeal is dismissed.

Sincerely yours,

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//original signed  
Assist. Secretary of the Interior

United States  
Department of the Interior  
Office of the Solicitor  
Washington, D.C., 20240  
NOV 14, 1966

IBIA 75-14

Mr. Arthur W. Kirschenmann  
Attorney at Law  
303 E. "D" Street  
Yakima, Washington

Dear Mr. Kirschenmann:

This replies to your letter of October 31, 1966, transmitting therewith an appeal by Caroline Charles, Yakima allottee No. 4240.

We have today referred this matter for appropriate disposition to the Commissioner of Indian Affairs, who has jurisdiction over proposed modifications in the blood quantum shown for individuals on the Yakima roll prepared pursuant to the Act of August 9, 1946, 60 Stat 963.

We are also sending a copy of this letter to Hearing Examiner Montgomery so that he will be advised that Miss Charles is appealing from the redetermination of her Yakima blood quantum and will therefore be able to coordinate his handling of the estate of Morris Charles with Miss Charles' appeal.

Sincerely yours,

//original signed  
Duard R. Barnes  
Assistant Solicitor  
Appeals & Litigation

cc: BIA, Att'n: Tribal Operations,  
with incoming correspondence,  
for action indicated  
Hearing Examiner Montgomery  
For action indicated

3/31/72: This is the last information we have in the record regarding the appeal. However, Tribal Operations in the Central Office in Washington, D.C. advised this office on 3/24/72, that the appeal had been denied by the BIA.

R. J. Montgomery, Hearing Examiner